



U. S. No. 275.

DEC 28 1897.

JAMES H. MCKENNEY,

CLERK.

Motion papers.

Filed Dec. 28, 1897.

In the Supreme Court of the United States.

October Term, 1897.

UNITED STATES, APPELLANT,
v.
THE RIO GRANDE DAM AND IRRIGATION CO. *et al.*, appellees. } No. 542.

MOTION TO ADVANCE.

1. *On the first day of the month of the year*

2. *On the second day of the month of the year*

3. *On the third day of the month of the year*

4. *On the fourth day of the month of the year*

5. *On the fifth day of the month of the year*

6. *On the sixth day of the month of the year*

7. *On the seventh day of the month of the year*

8. *On the eighth day of the month of the year*

9. *On the ninth day of the month of the year*

10. *On the tenth day of the month of the year*

11. *On the eleventh day of the month of the year*

12. *On the twelfth day of the month of the year*

13. *On the thirteenth day of the month of the year*

14. *On the fourteenth day of the month of the year*

15. *On the fifteenth day of the month of the year*

16. *On the sixteenth day of the month of the year*

17. *On the seventeenth day of the month of the year*

18. *On the eighteenth day of the month of the year*

19. *On the nineteenth day of the month of the year*

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

UNITED STATES, APPELLANT,
v.
THE RIO GRANDE DAM AND IRRIGATION CO. *et al.*, appellees. } No. 543.

MOTION TO ADVANCE.

Now comes the appellant, by the Solicitor-General, and moves the court to advance said cause on the docket and set it for hearing at the earliest practicable date convenient to the court.

STATEMENT.

The record discloses the following facts:

The defendant company, The Rio Grande Dam and Irrigation Company, was duly incorporated under the laws of the Territory of New Mexico for the avowed purpose of constructing a reservoir and ditches for irrigation purposes at or near Elephant Butte, on the Rio Grande River, a point about 125 miles north of El Paso, Tex.; and in pursuance of this project it was the alleged purpose of said company to dam the said river at the last-named point. To prevent the building of such dam,

on or about the 24th day of May, 1897, the United States filed its bill in the district court of the third judicial district of the Territory of New Mexico, setting forth the alleged intention of the defendant to construct the dam, and that if constructed it would be a violation of section 10 of the act of Congress approved September 19, 1890 (26 Stat., 454), and of section 3 of the act of Congress approved July 13, 1892 (27 Stat., 110), and thereupon prayed for a writ of injunction restraining said company from constructing or commencing to construct such proposed dam. Upon filing said bill, the court issued a temporary writ of injunction, as prayed, and fixed a day for hearing.

Subsequently, and before any hearing was had, the complainant filed an amended bill alleging, among other things, that said Rio Grande River was navigable and had been navigated by steamboats for 350 miles from its mouth, and was susceptible of navigation up to La Joya, in the Territory of New Mexico, about 150 miles above Elephant Butte; and that the river, from some rapids located about 150 miles below El Paso to said town of La Joya, "has at different times been used for the purposes of floating and transporting rafts, logs, and poles, and that said portion of said stream is susceptible of being used and navigated for commercial purposes." The amended complaint also alleges, in substance, that the impounding of the waters at Elephant Butte, as contemplated by the defendants, would so deplete the flow of the water through the channel of said river "as to seriously obstruct the navigable capacity of the same

throughout its entire course from said point at Elephant Butte to its mouth." It also sets out the provision in the treaty between the United States and the Republic of Mexico (known as the treaty of Guadeloupe Hidalgo), declaring that the Rio Grande, from the southern boundary of the Territory of New Mexico to its mouth, shall be free and common to the vessels and citizens of both countries, and that neither country shall, without the consent of the other, construct any work that may impede or interrupt, in whole or in part, the exercise of said right of free navigation, "and that neither party of said treaty has consented or authorized the construction of said dam."

Issue was joined on this amended bill and the case was tried before the district judge. On the 30th day of July last the court decreed a dissolution of the injunction and dismissed the bill of complaint.

From this decree the complainant appealed to the supreme court of the Territory, which court affirmed the decree of the district court, and the complainant appealed to this court.

It further appears in the record from the sworn statement of the secretary of said defendants that previous to the commencement of these proceedings the defendants had let contracts for the construction of a large portion of the work necessary to carry out the contemplated scheme of building irrigation works at Elephant Butte for the purpose of furnishing water to farmers and others at and below said point; that the work of construction had so far progressed that the New Mexico company had expended therefor the sum of about \$90,000, and the whole

expenditure of the defendants for such actual construction and for surveys, salaries, etc., aggregated about \$150,000, and that it would not be possible to preserve for any great length of time the results of the work already done in the construction of ditches, pipe lines, etc.

In view of these facts it would seem but just to all the parties in interest that this case should be advanced and speedily heard. If the waters of the Rio Grande River are navigable at Elephant Butte, or if a dam at that point would be obnoxious to the statutes prohibiting obstructions in navigable waters or in violation of the treaty obligations of the United States, then the matter should be speedily determined; and if, on the contrary, the defendants are entitled to proceed with their enterprise, it would be an unwarranted hardship to delay the final decision so far as to effect the destruction of the work already accomplished.

Opposing counsel concur in this motion.

JOHN K. RICHARDS,
Solicitor-General.

